



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 79**

**[CG Docket No. 05-231; FCC 14-12]**

**Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing  
Petition for Rulemaking**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission issues a Further Notice of Proposed Rulemaking (FNPRM) seeking comment on options and proposals to further enhance accessibility to television programming and to improve the Commission's procedural rules regarding closed captioning.

**DATES:** Comments on the section entitled Responsibilities for Meeting the Closed Captioning Requirements (paragraphs 1-8) are due on or before **[30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, and reply comments are due on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments on remaining sections are due on or before **[90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, and reply comments are due on or before **[INSERT DATE 120 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, identified by CG Docket No. 05-231, by any of the following methods:

Electronic Filers: Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS), through the Commission's Web site

<http://fjallfoss.fcc.gov/ecfs2/>. Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and **CG Docket No. 05-231**.

- Paper filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW., Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial Mail sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12<sup>th</sup> Street, SW., Washington, DC 20554.
- In addition, parties must serve one copy of each pleading with the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12<sup>th</sup> Street, SW., Room CY-B402, Washington, DC 20554, or via email to [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com).

For detailed instructions for submitting comments and additional information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

**FOR FURTHER INFORMATION CONTACT:** Eliot Greenwald, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418-2235 or e-mail [Eliot.Greenwald@fcc.gov](mailto:Eliot.Greenwald@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing, Inc. Petition for Rulemaking, Further Notice of Proposed Rulemaking (FNPRM), document FCC 14-12, adopted on February 20, 2014 and released on February 24, 2014, in CG Docket No. 05-231. In document FCC 14-12, the Commission adopted an accompanying Report and Order (Report and Order), which is summarized in a separate Federal Register Publication. The full text of document FCC 14-12 will be available for public inspection and copying via

ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12<sup>th</sup> Street, SW., Room CY-A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12<sup>th</sup> Street, SW., Room CY-B402, Washington, DC 20554, telephone: (800) 378-3160, fax: (202) 488-5563, or Internet: [www.bcpweb.com](http://www.bcpweb.com). Document FCC 14-12 can also be downloaded in Word or Portable Document Format (PDF) at

<http://www.fcc.gov/encyclopedia/disability-rights-office-headlines>.

<http://www.fcc.gov/encyclopedia/closed-captioning-video-programming-television>. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule § 1.1206(b). In proceedings governed by rule § 1.49(f) of the Commission's rules or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be

filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

## **INITIAL PAPERWORK REDUCTION ACT OF 1995 ANALYSIS**

Document FCC 14-12 seeks comment on potential new information collection requirements. If the Commission adopts any new information collection requirements, the Commission will publish another notice in the Federal Register inviting the public to comment on the requirements, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C 3501-3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks comment on how the Commission might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

## **SYNOPSIS**

### **Responsibilities for Meeting the Closed Captioning Obligations**

1. The Commission has previously placed direct responsibility for compliance with the closed captioning requirements on VPDs. Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility, MM Docket No. 95-176, Report and Order, (1997 Closed Captioning Report and Order); published at 62 FR 48487, September 16, 1997, reconsideration granted in part, MM Docket No. 95-176, Order on Reconsideration, (Closed Captioning Reconsideration Order); published at 63 FR 55959, October 20, 1998. The Commission seeks comment on whether the Commission should extend some of the responsibilities for compliance with the Commission's closed captioning quality standards for programming shown on television to video programmers, which are a subset of video programming providers (VPPs). In the television captioning context, VPPs include VPDs as well as video programmers, i.e., “any other entity that provides video programming that is intended for distribution to residential households including, but not limited to broadcast and non-broadcast television network and the owners of such programming.” See 47 CFR 79.1(a)(3). In the Report and Order, the Commission defines a video programmer as “entities that provide video programming that is intended for distribution to residential households including, but not limited to,

broadcast or non-broadcast television networks and the owners of such programming.” The Commission also seeks comment on whether this definition is sufficiently broad in scope to hold accountable all entities with direct control over caption quality or whether the Commission should expand the definition to cover other categories of entities and, if so, what other entities should be covered. Commenters advocating covering other entities should address the Commission’s authority to regulate those entities.

2. In addition to VPPs, the definition of video programmers includes “the owners of such programming.” The Commission has defined the term video programming owners (VPOs) for purposes of ensuring captions on video programming delivered via Internet protocol, but not for purposes of delivering television programs with captions. The Commission seeks comment on whether the Commission should define the term VPO for purposes of the television closed captioning rules. The Commission seeks comment on an appropriate definition for VPOs in the television context with respect to the provision of closed captioning. For example, should the Commission include in the definition of VPO a person or entity that licenses video programming to a video programming distributor or provider that makes the video programming available directly to the end user? What other entities should be covered under the definition of VPO in this context, and why?

3. Some interested parties support extension of the responsibility for caption quality to other entities in the captioning chain, in addition to VPDs, in the television context. For example, Comcast/NBCUniversal (Comcast) proposes adopting a “burden-shifting enforcement model” that extends some captioning responsibilities to VPOs. It appears that the category of VPOs Comcast proposes to reach would be covered under the Commission’s definition of “video programmers” as defined in the accompanying Report and Order, i.e., “entities that provide video programming that is intended for distribution to residential households including, but not limited to, broadcast or non-broadcast television networks, and the owners of such programming.” The Comcast proposal would give a VPD the initial burden of addressing and investigating matters brought to its attention concerning the closed captioning quality rules adopted in the accompanying Report and Order. If the problem at issue relates to the pass-through of captions or the VPD’s equipment, the VPD would be responsible for fixing it and bear any associated liability in an

enforcement proceeding if one were to be initiated, because these are problems within the VPD's direct control. If, however, the VPD learns that the problems raised are within the control of the VPO, the compliance burden would shift to the VPO, which would be charged with fixing the problem and bear any associated liability in an enforcement proceeding.

4. The Commission seeks comment on Comcast's burden-shifting proposal and whether it would result in an appropriate allocation of responsibilities for addressing failures to meet the Commission's captioning quality rules. Is this approach likely to achieve a prompter and more effective resolution of captioning quality problems brought to the VPD's attention? Will this model provide strong incentives for the various parties associated with program production and delivery to work cooperatively to improve captioning quality, as suggested by Comcast? Finally, the Commission notes that under the Comcast proposal, a VPD would be relieved of any liabilities associated with captioning problems once it determined that the problems raised are within the control of the VPO. The Commission seeks comment on how the Commission can be assured that when responsibility for captioning problems are shifted to other programming entities, VPDs will have appropriately transferred such liability. Should each VPD be obligated to report to the Commission when they shift this burden, with information about the results of its initial investigation to warrant this shift? Should the VPD remain jointly responsible with the programmer after informing the programmer about the need for the programmer to address the problem? The Commission asks commenters generally to provide input on the advantages and disadvantages of adopting Comcast's proposal, including its feasibility, as well as the costs and benefits of shifting responsibility for direct compliance with the Commission's closed captioning requirements to other entities responsible for the production and delivery of video programming.

5. Are there other approaches the Commission should consider using to apportion responsibilities for compliance with the television caption quality rules among entities involved in the production and delivery of video programming? Should any changes to the apportionment of these responsibilities apply generally to all captioning obligations, or only to the newly adopted captioning quality rules? To what extent should responsibilities be joint and several among specific entities? For example, is it

preferable to place the ultimate responsibility for compliance with a single entity or are there benefits to imposing joint responsibility on or dividing up responsibility among the responsible entities? What effect would the sharing of obligations across multiple entities have on consumers and industry, and to what extent can any negative effects be mitigated?

6. The Commission also seeks comment on the effect, if any, that extending responsibility for compliance to entities other than VPDs would have on the Commission's ability to efficiently monitor and enforce the closed captioning television rules. To what extent would the Commission's earlier predictions that VPDs would privately negotiate with VPOs and other VPPs regarding "an efficient allocation of captioning responsibilities" and that VPOs and other VPPs would "cooperate with distributors to ensure that nonexempt programming is closed captioned in accordance with [the Commission's] rules" apply to the caption quality context? In the IP captioning context, the Commission determined that although VPDs and VPOs may enter into private contracts placing some obligations on VPOs, leaving VPOs' responsibilities to be defined entirely by private contractual arrangements would be more costly and less efficient than appropriately allocating certain responsibilities among both VPOs and VPDs by Commission rule. IP Captioning Report and Order Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, MB Docket No. 11-154, Report and Order, (IP Captioning Report and Order); published at 77 FR 19480, March 30, 2012. Would a division of responsibilities for caption quality in the television context reduce or improve the Commission's efficiencies in overseeing the captioning rules? Is there a "liability gap" left by the Commission's decision in the 1997 Closed Captioning Report and Order to limit regulatory oversight to VPDs that needs to be addressed with respect to the general implementation of the Commission's television captioning rules by extending regulatory oversight to VPOs, video programmers or other entities? For example, as noted above, § 79.1(g)(6) of the Commission's rules permits VPDs to rely on certifications from programming suppliers to demonstrate compliance with the Commission's captioning requirements. 47 CFR 79.1(g)(6). Will imposing shared responsibilities on other entities in the programming chain help to alleviate concerns that could arise if a VPD relies on such certifications without taking any additional steps to ensure

that the programming at issue has in fact been delivered to the consumers with the captions intact and of a quality that now meets the Commission's captioning quality standards?

7. To the extent the Commission decides to impose some obligations directly on other programming entities, the Commission also seeks comment on whether any other changes to the rules or Best Practices adopted in the Report and Order are appropriate. For example, if the Commission extends obligations for compliance with the captioning quality standards directly to programmers, should the Commission allow such programmers to assert a safe harbor, which could then entitle them to take corrective actions to demonstrate compliance prior to being subject to enforcement action – akin to the compliance ladder adopted for stations in compliance with the new enhanced ENT procedures? Should the Commission similarly allow VPDs to assert a safe harbor, which would also entitle them to take corrective actions to demonstrate compliance prior to being subject to enforcement action, in the event certain obligations for compliance with the captioning quality standards are placed on VPDs? If the Commission were to extend direct compliance responsibility with its closed captioning requirements to video programmers or other programming entities, would it no longer be necessary to include § 79.1(g)(6) in the Commission's rules? In addition, the Commission seeks comment on whether there are similarities or differences between the television and the IP closed captioning contexts or the Commission's emergency information rule that justify similar or different regulatory approaches. The Commission seeks comment on any other issues related to extending some or all responsibility for compliance with the Commission's closed captioning requirements to other programming entities and asks commenters to address the costs and benefits of making any such adjustments to the Commission's rules.

8. Finally, the Commission invites parties generally to provide any information that they believe will contribute to a better understanding about which entities are ultimately better positioned to ensure compliance with the Commission's captioning quality standards.

#### **Minimum Captioning Quality Standards**

9. Live Programming. The Commission seeks comment on technical solutions for improving the synchronicity between the audio track and captions on live programming to facilitate understanding of a



program's content. For example, would providing the captioner advance delivery of the audio by a few seconds help to reduce captioning latency? The Commission asks commenters to provide input on this and other techniques to achieve greater synchronicity, and to explain how the incremental costs and burdens of utilizing any of the techniques they propose compare with the benefits of greater accessibility to television programming. The Commission asks commenters to indicate whether VPDs, programmers or other entities should be responsible for implementing such technical solutions.

10. The Commission also seeks additional information about methods to provide captions that capture the entirety of the program's aural content, including, for example (1) sending the audio feed to the live captioner in a way that alerts the captioner that the program's end is imminent, so that the captioner can paraphrase or abbreviate the remaining text before the program cuts off; (2) fading out the program after its last scene to add a few seconds for the transition to the next program or commercial content; (3) providing advance delivery of the audio to captioners by a few seconds; and (4) allowing captions remaining at the end of a program's audio to be placed in a location on the screen during the subsequent advertisement (or program) in a manner that does not overlap with the captions on that advertisement or program. The Commission seeks comment on the feasibility, costs and other concerns associated with requiring the use of one or more of these techniques to ensure that captioning of live programming is complete. Are there other technologies or techniques in addition to these that the Commission should consider requiring for this purpose, and if so, what are their costs, benefits and technical feasibility? If the Commission adopts more specific latency requirements, should the Commission also identify any exceptions for circumstances where it is not possible to ensure completeness, and if so, what circumstances would those be? If the Commission requires any new methods to ensure that captions capture the entirety of the program's aural content, should VPDs, programmers or other entities be responsible for implementing these methods? Finally, the Commission asks commenters to explain how the incremental costs and burdens of utilizing any of the techniques they propose compare with the benefits of greater accessibility to television programming.

11. Near-Live Programming. In the Report and Order, the Commission identifies measures that are likely to result in an improved quality of captions for both near-live programming and rebroadcasts of live

programming, including programmers providing an advance script, a near-completed program, or a live feed of the advance taping to a captioning agency, which the agency can then use to create a caption file that is later combined simultaneously with the program when it is aired. The Commission seeks comment on whether there are other measures in addition to these that can be used to improve the quality of near-live programming, as well as whether the Commission should require any such measures. In this regard, the Commission requests input on the feasibility, costs and other concerns that would be associated with such requirements, and how those compare with the benefits of greater accessibility to television programming. The Commission asks commenters to indicate how to apportion responsibilities among VPDs, programmers or other entities for ensuring compliance with any measures adopted to improve the quality of near-live programming.

12. The Commission also seeks comment on whether its current definition of near-live programming is appropriate for purposes of the quality standards that the Commission adopted in the Report and Order. Commission rules pertaining to the IP captioning requirements currently define near-live programming as programming that is performed and recorded within 24 hours prior to when it is first aired on television. 47 CFR 79.4(a)(8). Consumer Groups recommend that the Commission “presumptively limit ‘near-live’ programming to programming recorded and performed less than double its length prior to air – e.g., two hours before the airing of a one-hour program – and deem ‘pre-recorded’ all programming recorded and performed more than double its length prior to air.” Consumer Groups also recommend that the Commission require the use of offline captioning where doing so is achievable and that “VPDs delivering near-live programming using real-time captions maintain records of the reason that offline captioning is not achievable.”

13. Although consumers recommend that VPDs be required to maintain such records, it may be more appropriate for programmers who are directly responsible for the delivery of programs with captions to bear this obligation. The Commission seeks comment on establishing such a requirement, as well as the other proposals made by the Consumer Groups. Is the Commission’s current definition of near-live programming adequate to achieve the goal of promoting caption quality? Is it technically and financial feasible to caption

programming performed less than 24 hours prior to air offline instead of in real-time? Is the Consumer Groups' proposal to limit near-live programming to programming recorded and performed less than double its length prior to air feasible? Does it better promote quality captioning? The Commission also seeks specific cost information on the impact of changing the definition of near-live programming for purposes of the Commission's caption quality rules.

14. Live and Near-Live Program Re-feeds. For live and near-live programs that were originally captioned using real-time captioning techniques but that are later re-aired on television after the effective date of the caption quality standards, the Commission asks whether the Commission should require the use of offline captioning or other measures that the Commission encouraged in the Report and Order to improve the quality of closed captioning. For example, should the Commission adopt a requirement to correct errors inadvertently made and timing lags that occurred when the program was first aired with real-time captions? Are there other measures that can be taken between the time of the first and subsequent showings that can help improve the caption viewer experience of such programs? If any rules were to be adopted requiring correction of captioning errors and timing lags on re-feeds of live and near-live programming, should such rules include threshold error rates or time lags before correction is required, and if so what should those thresholds be? The Commission asks commenters to provide feedback on the feasibility, costs and burdens that would be associated with such requirements to take certain measures to improve captions on re-feeds, and to compare these with the benefits of greater accessibility to television programming. The Commission also seeks input on the minimum interval needed between the original airing and the re-feed that would make such measures feasible. Finally, the Commission seeks comment on who should be responsible for implementing measures that will improve the accuracy, synchronicity, completeness and placement of captions on program re-feeds – VPDs, programmers, or other entities.

#### **Use of Electronic Newsroom Technique by Non-Broadcast Channels**

15. The Commission seeks comment on whether to apply the ENT requirements adopted for broadcasters in the Report and Order to non-broadcast networks. What effect, if any, will these proposals have on the availability of news and public affairs programming as well as other live programming on non-

broadcast networks serving less than 50 percent of all homes subscribing to MVPD services? What are the benefits and disadvantages of these proposals for consumers seeking full access to news programming? The Commission also seeks other information that will help the Commission to assess the costs and benefits if it were to apply these proposed obligations on non-broadcast networks.

## **Compliance**

16. Technical Equipment Checks. The Commission seeks comment on whether to establish specific intervals by which equipment checks codified in the Report and Order should take place and, if so, how frequently these checks should be performed to ensure that captioning is reliably delivered and video programming is fully accessible to consumers. The Commission seeks comment on the extent to which measures other than regular equipment checks, such as automated technologies that can be used to ensure that captions are passed through to consumers, should be permitted as alternative methodologies for monitoring. Commenters are asked to weigh the costs of these proposals as well as the costs of particular time intervals against the benefits of increasing reliable access to video programming by people who are deaf and hard of hearing.

17. Resolution of Consumer Complaints. The National Cable and Telecommunications Association (NCTA) proposes in its Best Practices that VPDs take the following actions designed to improve the prompt resolution of consumer's captioning concerns.

- Consumer care awareness and training. Maintain consumer support and escalation for captioning issues and provide targeted information or conduct training for customer care agents or television station personnel, as appropriate, to help with and assist in the resolution of caption quality and other captioning support issues.
- Identification and remediation of recurring captioning issues. Make reasonable efforts to identify consumer complaints received about captioning issues and periodically review these complaints to identify and resolve recurring captioning problems.

The Commission seeks comment on whether to adopt these practices noted above. The Commission asks

commenters to address their experiences with the resolution of complaints filed directly with VPDs and whether adherence to the above practices would affect either positively or negatively the resolution of such complaints. The Commission asks commenters to also address the costs and benefits of requiring VPDs to implement these complaint handling practices.

18. Consumer Groups recommend that the Commission provide the public with information about all captioning-related complaints as part of a Commission-wide “dashboard.” The Commission seeks comment on having the Commission make such information available to the public.

19. Outages. The Commission seeks comment on whether VPDs should be required to notify both consumers and the Consumer and Governmental Affairs Bureau (CGB) when captioning outages occur. Such outage reporting would only be required where there is an underlying obligation to provide captions, not where programming entities are exempt or otherwise excused from the captioning obligations. Given that some programming is exempt from the Commission’s captioning rules, the Commission also seeks comment on whether and how consumers should be informed when captions are not required on particular programs. The Commission also seeks input on the duration and frequency of outages that should trigger any notification requirements. The Commission requests that parties provide comments on the practical and technical feasibility of notifying the public of a captioning outage on VPD web sites and via periodic crawls on affected programs. For example, to what extent do the causes of outages impact the ability of the VPD to notify customers of the outage? Should VPDs be required to provide timely updates of service status that they are working on so that consumers are aware while watching the program? In this regard, the Commission also seeks comment about the length of time it generally takes to repair an outage after it has been discovered. Next, the Commission seeks comment on the appropriate passage of time after such outage commences before a VPD should be required to notify consumers and the Commission that an outage has occurred. VPDs should also comment on how they can become aware of captioning outages and how that will affect their ability to notify consumers. How do the costs and burdens of providing such notifications compare with the benefits of greater consumer access to information about captioning outages?

20. The Commission also seeks comment on whether the Commission should require the VPD to

submit an outage report to CGB, on the contents and timing of such a report, and how the report should be filed. What minimum outage time should trigger the filing of a report? If outage reports are required, what information should be included in the report? For example, should it include a list of the VPD's affected programs, the geographic locations affected by the outage, the dates and times for the start and end of the outage, and the cause of the outage? If the outage lasts for more than one day, should the VPD be required to seek out other captioning sources while repairing equipment? How soon after the outage starts and ends should the report be filed with CGB? As an alternative to submitting outage reports, should VPDs be required to maintain records of their outages and for what length of time? How do the costs and burdens of filing captioning outage reports with CGB or keeping outage records compare with the benefits of achieving improved enforcement of the closed captioning obligations for consumers? In addition, the Commission notes that the obligation under § 79.2 of the Commission's rules to make emergency information visually accessible exists even if closed captioning is not available, and that the VPD may use scrolls, crawls, or other visual alternatives to fulfill that obligation. See 47 CFR 79.2. The Commission also notes that it does not intend for the notification and reporting requirements proposed herein to relieve VPDs of their obligations to prevent foreseeable and avoidable situations created by inaction or delay. Finally, the Commission asks interested parties to provide comment on how any responsibilities associated with the outage reporting obligations should be apportioned among VPDs, programmers, program owners, or other entities.

21. Amending § 79.1(i)(3) of the Commission's Rules to Require All Contact Information Be Submitted to the VPD Registry. Over the past three years, the Commission has found that the VPD Registry offers the most efficient and accurate means of collecting VPD contact information for the receipt and handling of immediate captioning concerns raised by consumers while they are watching television as well as for closed captioning complaints. The Commission proposes to amend its rules to require VPD contact information required under § 79.1(i)(1) and (2) of the Commission's rules to be submitted to the Commission directly to the VPD Registry through the web form method and seeks comment on this proposal. How do the costs of transitioning to a mandatory web form method of filing compare with the ease and accuracy of filing and benefits derived from such mandatory system?

22. Treatment of Consumer Complaints by a VPD that Is Not the Responsible Party. In the 2008 Closed Captioning Decision, the Commission adopted § 79.1(g)(3) of the Commission's rules, 47 CFR 79.1(g)(3), which requires a VPD that receives a closed captioning complaint for a program for which it does not have closed captioning responsibility, to forward that complaint to the responsible entity within seven days of receiving the complaint, and then to notify the complainant that the complaint was forwarded. 2008 Closed Captioning Decision. On June 10, 2009, Time Warner Cable (Time Warner) filed an ex parte letter identifying potential conflicts between the Commission's amended § 79.1(g)(3) and the obligations of cable companies to protect a subscriber's privacy under section 631(c)(1) of the Act. 47 U.S.C. 551(c)(1).

23. On December 11, 2009, the Commission released an Order temporarily staying the effective date of the forwarding provision of amended § 79.1(g)(3) of the Commission's rules. See Closed Captioning of Video Programming, CG Docket No. 05-231, Order Suspending Effective Date, (2009 Suspension Order); published at 75 FR 7369, February 19, 2010. Noting the potential conflict between amended § 79.1(g)(3) of the Commission's rules and sections 631(c) and 338(i)(4) of the Act (the latter creating the same prohibitions for satellite providers), the Commission found good cause to temporarily suspend the effective date for § 79.1(g)(3) of the Commission's rules, pending the completion of further rulemaking proceedings to determine how closed captioning complaints sent to the incorrect entity should be handled.

24. In order for a third party video programming provider to respond to a forwarded complaint, that complaint must include the complainant's name, address, telephone number and other personally identifiable information. Yet, sections 631(c) and 338(i)(4) of the Act appear to prohibit the forwarding of such information without the complainant's consent.

25. Accordingly, the Commission proposes amending § 79.1(g)(3) of the Commission's rules to require that within seven days after a VPD receives a complaint regarding programming of a broadcast television licensee or programming over which the VPD does not exercise editorial control, it be required to notify the complainant – using the complainant's preferred method of communication – of the appropriate party to whom the complaint should be sent, and give the complainant the option of either (1) asking the VPD to forward the complaint to the appropriate party electronically or in writing, or (2) submitting the complaint

directly to the appropriate party on his or her own. In addition, the Commission proposes that the VPD, after taking such action, inform the Commission that it has so notified the complainant by providing the Commission with copies of all written or electronic correspondence or a written description of all communications that were not either in electronic or written form. Under this proposal, if the VPD is asked by the complainant to forward the complaint to the appropriate party, the VPD would be required to do so within seven days of receiving such request, and if the VPD is not asked to forward the complaint, it would have no further responsibility. The Commission seeks comment on these proposals, including whether the second prong of the proposed requirement – requiring the VPD to notify the Commission that it has informed the complainant of the available options – would itself be a violation of sections 631(c)(1) and 338(i)(4) of the Act in instances where the consumer files his or her complaint with the VPD only and does not authorize the VPD to provide a copy to the Commission. If the Commission decides to require the VPD to notify it, the Commission seeks comment on the method a VPD must use to notify the Commission. How do the costs of forwarding complaints upon consumer request and notifying the Commission of actions taken compare with the benefits of providing a consumer-friendly way to get the complaints to the correct parties? Finally, the Commission requests commenters to submit any alternative proposals for amending § 79.1(g)(3) of the Commission’s rules to avoid breaching the consumer protections contained in sections 631(c)(1) and 338(i)(4) of the Act.

### **Captioning Exemptions**

26. Elimination of the New Network Exemption. The Commission seeks comment on the merits of continuing to allow all new networks to receive a four year exemption from the closed captioning rules. See 47 CFR 79.1(d)(9). Should newly launched networks build the costs of captioning into their business plans during the planning of their networks? If the Commission were to eliminate the new network exemption, should the Commission adopt a phase-in period to provide an opportunity for networks that are about to commence operations to plan for the required captioning? If so, what should this phase-in be? The Commission seeks comment on the costs and benefits of eliminating the new network exemption.



27. As an alternative, the Commission seeks comment on modifying the new network exemption. Currently, the exemption is for four years. Would a one or two year exemption be more appropriate? The Commission seeks comment on these or any other time periods that might be appropriate for a revised new network exemption. Even if the Commission retains the new network exemption, should the exemption apply only to new networks that have certain other indicia of a start-up network, e.g., local or regional in nature, accessible by a small number of households, and ownership by a small business? If the Commission takes this approach, how does it define each of these or other proposed criteria for limiting the new network exemption? Alternatively, should networks with significant financial backing be deemed ineligible for the new network exemption? For example, should the exemption not apply to new networks that are owned, in whole or part, by one of the four major national broadcast networks or the top ten non-broadcast networks? How do the relative costs and burdens of requiring new networks to provide captioning under each of these alternatives compare with the benefits of greater accessibility to television programming?

28. If the Commission does retain this exemption, the Commission also seeks comment on the definition of “network” for purposes of the closed captioning rules. The exemption for new networks is based on the number of years that a programming network has been in operation rather than the number of subscribers. 47 CFR 79.1(d)(9). Further, this exemption applies to different types of networks – broadcast, non-broadcast, national, and regional. 1997 Closed Captioning Report and Order; see also Closed Captioning Reconsideration Order. To begin with, the Commission seeks comment on the extent to which it should rely on other definitions of “network,” contained elsewhere in the Commission’s rules. For example, § 73.3613(a)(1) of the Commission’s rules defines “network” with respect to broadcast network affiliation agreements that must be filed with the Commission as “any person, entity, or corporation which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more states.” 47 CFR 73.3613(a)(1); see also 47 CFR 76.55(f) (similar definition for purposes of the cable “must carry” rules). Alternatively, § 76.5(m) of the Commission’s rules, pertaining to cable operators providing network non-duplication protection to television stations, defines a “network program” as “. . . any program delivered simultaneously to more than one broadcast station regional or

national, commercial or noncommercial.” 47 CFR 76.5(m). The Commission seeks comment on whether these or a different definition of “network” would be appropriate for purposes of § 79.1(d)(9) of the Commission’s rules, and whether to apply the same definition to broadcast and non-broadcast networks.

29. Next, the Commission notes that MVPDs serving U.S. subscribers increasingly offer video programming networks that were initially launched in foreign markets. In the event the Commission retains the new network exemption, the Commission seeks comment on whether a network that has operated in a foreign market and that moves to distribution or “launches” in the U.S., should be eligible for a new network exemption for a certain period of time after it launches in the U.S. and, if so, what the duration of that exemption should be. The Commission also seeks feedback on how to calculate the exemption period for such a new network, specifically, whether such network should be considered new as of the date that it begins distribution in the U.S., or whether its launch date should be considered the date that it initially began viewing in its originating country. The Commission asks commenters that believe the Commission should calculate an exemption upon moving the network’s programming to the U.S. to explain why this exemption is necessary, given that such networks will have been in operation (and presumably generating revenues) and will have advance notice of U.S. captioning obligations prior to launching in the U.S. How do the costs and burdens of providing captioning on networks showing programming in the U.S. after first showing programming in foreign countries compare with the benefits of greater accessibility to television programming?

30. Last, in the event the Commission retains the new network exemption, the Commission seeks comment on the application of the new network exemption to networks created as the result of a merger of two or more existing networks. The Commission seeks comment on whether the original launch dates of networks that merged should be considered the applicable date for purposes of determining the exemption period for the merged entity. The Commission also seeks comment on which date should control in those situations where the merged entities had different original launch dates. Should the duration of the exemption be calculated based on the individual network that has been in existence for the longest period of time? Is this approach appropriate because the new network exemption applies for a limited number of years – four years

under the current rules so that no component part of the combined network would have the benefit of the exemption for longer than the maximum length of time provided by the rule? The Commission also seeks comment on whether the new network exemption should apply or be extended in the event of a restructuring of a network. Because the captioning rules were promulgated sixteen years ago and each network will have known about captioning requirements since its inception, has the network had sufficient time to integrate closed captioning into its production process and costs? The Commission seeks comment on this issue including its costs and benefits.

31. Consumer Groups' 2011 Petition Requesting Elimination of Certain Self-Implementing Exemptions from the Captioning Rules. On January 27, 2011, the Consumer Groups filed a joint petition for rulemaking (2011 Petition) seeking amendment to the Commission's captioning rules regarding an exclusion and several categorical self-implementing exemptions from the obligation to caption television programming. The Consumer Groups requested, in light of modern technology, the reduced costs of captioning, and other changed circumstances, that the Commission eliminate the exclusion for advertisements of five minutes duration or less, see 47 CFR 79.1(a)(1), and the self-implementing exemptions provided for the following types of programming: late night programming, see 47 CFR 79.1(d)(5), locally produced and distributed non-news programming with no repeat value, see 47 CFR 79.1(d)(8), interstitials, promotional announcements, and public service announcements that are 10 minutes or less in duration, see 47 CFR 79.1(d)(6), and channels producing revenues under \$3 million, see 47 CFR 79.1(d)(12). The Commission seeks comment on the Consumer Groups' proposal to eliminate the advertising exclusion and the specified self-implementing exemptions from the closed captioning rules. The Commission asks commenters to address the merits as well as the costs and benefits of each proposal put forth by the Consumer Groups.

#### **Technical Standards for the Display of Closed Captions**

32. In the 2000 DTV Closed Captioning Order, the Commission adopted, with some modifications, section 9 of CEA-708, to provide guidelines for encoder and decoder manufacturers and caption providers to implement closed captioning services with digital television technology. See Closed Captioning Requirements for Digital Television Receivers; Closed Captioning and Video Description of

Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility, ET Docket No. 99-254, MM Docket No. 95-176, Report and Order, (2000 DTV Closed Captioning Order); published at 65 FR 58467, September 29, 2000; see also 47 CFR 79.102. The standards require DTV closed caption decoders to support certain advanced features, including different caption sizes, fonts, character background and foreground colors, and other similar features, to allow viewers to customize the display of closed captions on their televisions. The Commission now seeks comment on the experiences that caption users have had since adoption of these standards, including the extent that such consumers have succeeded in using these features to improve their television experience.

33. In addition to allowing users to control the appearance of captions, CEA-708 allows programmers more options for the display of captions, such as multiple windows, fonts, and styles. The Commission seeks information on current practices for such formatting of closed captions. To what extent was the Commission correct in its earlier expectation that CEA-708 captions would be provided and its prediction that “programmers and caption providers” would have incentives to provide CEA-708 captions? To what extent are VPDs, video programmers, captioners, or other entities each involved in the production process for formatting closed captions in a manner that provides the advanced features adopted by the Commission in the 2000 DTV Closed Captioning Order, such as delivering captions in programmer-selected size, font, character background colors, and foreground colors of closed captions? What other entities are involved in the process, and how so? If VPDs, video programmers, captioners, or other entities involved in the production process are not formatting closed captions to use CEA-708 capabilities, why not? What action, if any can the Commission take to ensure the effective implementation of the CEA-708 capabilities so that television viewers who use captions can take full advantage of the capabilities this standard was intended to provide?

#### **Caption Obstructions**

34. Some caption viewers have raised concerns about closed captions being partially or completely blocked by other visual information, such as graphics, that appear on the screen. The Commission seeks comment on the extent to which on-screen visual changes or textual depictions, including, but not

limited to, split screens, pop-on advertisements and promotions, credits, graphic overlays, or contact information, have caused a problem for caption viewers. To the extent that these problems exist, the Commission asks for comment on their causes and possible solutions.

### **New Technologies**

35. Captioning on 3D Television Programming. To better understand current practices and capabilities with regard to closed captioning of 3D TV programming, the Commission seeks comment on the following:

- How are DTV manufacturers ensuring that captions continue to work when 3D TV programming is shown on television sets with 3D capability?
- Are there issues regarding the placement of captions in a 3D picture? What steps must manufacturers take to ensure that captioning in 3D TV programming is inserted and placed at an appropriate depth of field in the 3D image? Do user-selected changes to font size and location of the captions operate differently in a 3D image?
- With regard to television sets with 3D capability, will captions display properly when the user switches between 2D and 3D modes?
- How do the costs and burdens of providing closed captioning in 3D TV programming compare with the benefits of greater accessibility to television programming?

The Commission seeks input on any other matters that could affect the availability of closed captioning on 3D TV programming.

36. Captioning on Ultra High Definition Television Programming. To better understand current practices and capabilities with regard to closed captioning of Ultra HDTV programming, the Commission seeks comment on the following:

- How are Ultra HDTV manufacturers ensuring that captions continue to appear legibly when programming is shown on Ultra HDTV television sets?
- Do the standards for Ultra HDTV programming have the same capabilities for the transmission or

pass-through of captions as HDTV and SDTV programming?

- Does the increased resolution present new challenges related to the display of captions, particularly with respect to font size of the captions? If so, what are these new challenges, and how can they be addressed?
- How do the costs and burdens of additional requirements concerning closed captioning for Ultra HDTV programming compare with the benefits of greater accessibility to television programming?

The Commission seeks input on any other matters that could affect the availability of closed captioning on Ultra HDTV programming.

#### **INITIAL REGULATORY FLEXIBILITY CERTIFICATION**

37. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in document FCC 14-12 FNPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments in document FCC 14-12. The Commission will send a copy of document FCC 14-12, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

38. In document FCC 14-12, the Commission seeks comment on (1) whether the Commission should impose some responsibilities for compliance with the Commission's closed captioning quality rules on video programmers and other entities; (2) whether the Commission should require specific measures to ensure program completeness and synchronicity for live and near-live programming and how the Commission should define near-live programming; (3) whether the Commission should require the use of offline captioning or other measures to achieve improved accuracy, synchronicity, placement and program completeness of captions prior to the re-airing of live and near-live programming first shown after the effective date of any such rule; (4) whether to apply the ENT requirements adopted for broadcasters to non-broadcast networks that use ENT and serve less than 50 percent of all MVPD homes to achieve greater accessibility to news

programming; (5) whether to establish specific maximum intervals for technical equipment checks or to allow alternatives to such technical equipment checks ; (6) whether to adopt a proposal for improving the prompt resolution of consumers’ captioning concerns by VPDs, and whether to create a publicly available “dashboard” that would provide information about all captioning-related complaints; (7) whether to require that captioning outages be communicated to viewers in real-time and be reported to the Commission, consistent with the reporting requirements for other types of outages; (8) whether to require that all contact information already required to be submitted by VPDs to the Commission for the VPD registry be submitted using the Commission’s web form system only; (9) how to amend the Commission’s rules regarding the forwarding of consumer complaints to ensure subscriber privacy when the VPD receiving an informal complaint is not the responsible party; (10) whether to eliminate or retain the four-year exemption contained in § 79.1(d)(9) of the Commission’s rules pertaining to new networks, and if retained, whether to reduce the term of the exemption or limit its availability based on certain criteria indicative of a start-up network, how to define network, how to calculate the start date of the network for purposes of the exemption, and whether and how the exemption should be applied to networks created as the result of a merger of two or more existing networks; (11) whether to eliminate or retain the exclusion contained in § 79.1(a)(1) of the Commission’s rules for advertisements of five minutes duration or less and certain self-implementing exemptions contained in § 79.1(d) of the Commission’s rules, including exemptions for late night programming, locally produced and distributed non-news programming with no repeat value, interstitials, promotional announcements, and public service announcements that are 10 minutes or less in duration, and channels producing revenues under \$3 million; (12) current practices with regard to technical standards for the display of closed captioning; (13) the extent to which onscreen visual changes or textual depictions have caused a problem for caption viewers; and (14) current practices and capabilities with regard to closed captioning of 3D TV and ultra HDTV.

39. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same

meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

40. Small Businesses, Small Organizations, and Small Governmental Jurisdictions. As of 2009, small businesses represented 99.9% of the 27.5 million businesses in the United States, according to the SBA. Additionally, a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” 5 U.S.C. 601(4). Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” 5 U.S.C. 601(5). Census Bureau data for 2007 indicate that there were 89,527 governmental jurisdictions in the United States. The Commission estimates that, of this total, as many as 88,761 entities may qualify as “small governmental jurisdictions.”

41. Cable Television Distribution Services. These services have been included within the broad economic census category of Wired Telecommunications Carriers. The SBA has developed a small business size standard for this category, which is all such firms having 1,500 or fewer employees. According to data from the U.S. Census Bureau for the year 2007, there were 3,188 Wired Telecommunications Carrier firms that operated for the entire year in 2007. Of these, 3,144 operated with less than 1,000 employees, and 44 operated with 1,000 or more employees.

42. Cable Companies and Systems. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers, nationwide. 47 CFR 76.901(e). Industry data shows that there are 1,100 cable companies. Of this total, all but 10 incumbent cable companies are small. In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers. 47 CFR 76.901(c). Current Commission records show 4,945 cable systems nationwide. Of this total, 4,380 cable systems have less than 20,000 subscribers, and 565 systems have 20,000 subscribers or more.

43. Cable System Operators (Telecom Act Standard). The Communications Act of 1934, as amended, contains a size standard for small cable system operators, which is “a cable operator that, directly or



through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.” 47 U.S.C. 543(m)(2); see also 47 CFR 76.901(f) and nn.1-3. Based on available data, all but 10 incumbent cable operators are small under this size standard.

44. Direct Broadcast Satellite (DBS) Service. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic “dish” antenna at the subscriber’s location. Currently, only two entities, DIRECTV and DISH Network, provide DBS service, and neither company is a small business.

45. Wireless Cable Systems – Broadband Radio Service and Educational Broadband Service. Wireless cable systems use the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) to transmit video programming to subscribers. In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years. Of the 67 auction winners, 61 met the definition of a small business, and of these 61 winners, 48 remain small business licensees. In addition, there are approximately 392 incumbent BRS licensees that are considered small entities. Accordingly, there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission’s rules. In 2009, the Commission conducted Auction 86 for the sale of 78 BRS licenses, and established three categories of small businesses: (i) a bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years is a small business; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years is a very small business; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years is an entrepreneur. Of the 10 winning bidders, two bidders that claimed small business status won four licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

46. In addition, the SBA’s placement of Cable Television Distribution Services in the category of Wired Telecommunications Carriers is applicable to cable-based Educational Broadcasting Services. The

SBA has developed a small business size standard for Wired Telecommunications Carriers, which is all such businesses having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 Wired Telecommunications Carrier firms that operated for the entire year in 2007. Of these, 3,144 operated with less than 1,000 employees, and 44 operated with 1,000 or more employees. In addition to Census Bureau data, the Commission's internal records indicate that as of September 2012, there are 2,239 active EBS licenses. The Commission estimates that of these 2,239 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.

47. Open Video Services. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is Wired Telecommunications Carriers. The SBA has developed a small business size standard for this category, which is all such firms having 1,500 or fewer employees. According to U.S. Census data for 2007, there were 3,188 firms that in 2007 were Wired Telecommunications Carriers. Of these, 3,144 operated with less than 1,000 employees, and 44 operated with 1,000 or more employees. However, as to the latter 44 there is no data available that shows how many operated with more than 1,500 employees.

48. Television Broadcasting. The SBA defines a television broadcasting station as a small business if such station has no more than \$35.5 million in annual receipts. The Commission has estimated the number of licensed full power commercial television stations to be 1,388. According to U.S. Census data for 2007, there were 2,076 television broadcasting establishments in 2007. Of these, 1,515 establishments had receipts under \$10 million, and 561 had receipts of \$10 million or more. The Commission notes, however, that, in assessing whether a business concern qualifies as small under the above definition, business control affiliations must be included. Because many of these stations may be held by large group owners, and the revenue figures on which the Commission's estimate is based does not include or aggregate revenues from control affiliates, the Commission's estimate likely overstates the number of small entities that might be affected by the Commission's action.

49. The Commission has estimated the number of licensed noncommercial educational (NCE) full power television stations to be 396. The Commission does not compile and otherwise does not have

access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities. There are also 428 Class A television stations and 1,986 low power television stations (LPTV). Given the nature of these services, the Commission will presume that all Class A television and LPTV licensees qualify as small entities under the SBA definition.

50. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and is therefore over-inclusive to that extent. Also as noted, an additional element of the definition of “small business” is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities, and the Commission’s estimates of small businesses to which they apply may be over-inclusive to this extent.

51. Incumbent Local Exchange Carriers (ILECs). Neither the Commission nor the SBA has developed a small business size standard specifically for ILECs. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees and “is not dominant in its field of operation.” The SBA’s Office of Advocacy contends that, for RFA purposes, small ILECs are not dominant in their field of operation because any such dominance is not “national” in scope. The Commission has therefore included small ILECs in this RFA analysis, although the Commission emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

52. According to Census Bureau data for 2007, that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of less than 1000 employees, and 44 firms had had employment of 1,000 or more. According to Commission data, 1,307 carriers have reported that they are engaged in the provision of ILEC services. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.

53. Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs),

Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of less than 1000 employees, and 44 firms had had employment of 1,000 employees or more. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either CLEC services or CAP services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Seventy-two carriers have reported that they are Other Local Service Providers, and of the 72, 70 have 1,500 or fewer employees and 2 have more than 1,500 employees.

54. Electric Power Distribution Companies. These entities can provide video services over power lines (BPL). The SBA has developed a small business size standard for this category, which is all such firms having 1,000 or fewer employees. Census Bureau data for 2007 show that there were 1,174 firms that operated for the entire year in this category. Of these firms, 50 had 1,000 employees or more, and 1,124 had fewer than 1,000 employees.

55. Cable and Other Subscription Programming. These entities may be directly or indirectly affected by the Commission's action. The size standard established by the SBA for this business category is that annual receipts of \$35.5 million or less determine that a business is small. According to 2007 Census Bureau data, there were 396 firms that were engaged in production of Cable and Other Subscription Programming. Of these, 349 had annual receipts below \$25 million, 12 had annual receipts ranging from \$25 million to \$49,999,999, and 35 had annual receipts of \$50 million or more.

56. Motion Picture and Video Production. These entities may be directly or indirectly affected by the Commission's action. The size standard established by the SBA for this business category is that annual receipts of \$30 million or less determine that a business is small. According to 2007 Census Bureau

data, there were 9,095 firms that were engaged in Motion Picture and Video Production. Of these, 8,995 had annual receipts of less than \$25 million, 43 had annual receipts ranging from \$25 million to \$49,999,999, and 57 had annual receipts of \$50 million or more.

57. Internet Publishing and Broadcasting and Web Search Portals. These entities may be directly or indirectly affected by the Commission's action. The SBA has deemed an Internet publisher or Internet broadcaster or the provider of a web search portal on the Internet to be small if it has fewer than 500 employees. Census Bureau data for 2007 show that there were 2,705 such firms that operated that year. Of those 2,705 firms, 2,682 (approximately 99%) had fewer than 500 employees, and 23 had 500 or more employees.

58. Closed Captioning Services. These entities may be directly or indirectly affected by the Commission's action. The SBA has developed two small business size standards that may be used for closed captioning services, which track the economic census categories, "Teleproduction and Other Postproduction Services" and "Court Reporting and Stenotype Services."

59. The relevant size standard for small businesses in Teleproduction and Other Postproduction Services is annual revenue of less than \$29.5 million. Census Bureau data for 2007 indicate that there were 1,605 firms that operated in this category for the entire year. Of that number, 1,587 had annual receipts totaling less than \$25 million, 9 had annual receipts ranging from \$25 million to \$49,999,999, and 9 had annual receipts of \$50 million or more.

60. The size standard for small businesses in Court Reporting and Stenotype Services is annual revenue of less than \$14 million. Census Bureau data for 2007 show that there were 2,706 firms that operated for the entire year. Of this total, 2,687 had annual receipts of under \$10 million, 11 firms had annual receipts of \$10 million to \$24,999,999, and 8 had annual receipts of \$25 million or more.

61. If the Commission were to adopt rules extending responsibilities for compliance with the Commission's closed captioning quality standards and other captioning requirements to video programmers or entities other than VPDs, such regulations would impose new compliance obligations and may impose additional reporting and recordkeeping obligations on video programmers, video programming owners, and

other entities, including small entities.

62. If the Commission were to adopt rules requiring the use of certain measures to ensure program completeness and synchronicity of closed captions for live and near-live programming and changing the Commission's current definition of near-live programming for purposes of the quality standards adopted in the Order, such regulations would impose additional compliance obligations on VPDs, including small entities.

63. If the Commission were to adopt rules requiring the use of offline captioning or other measures to achieve improved accuracy, synchronicity, placement and program completeness of the captions prior to the re-airing of live and near-live programs, such regulations would impose additional compliance obligations on VPDs, including small entities.

64. If the Commission were to apply the ENT requirements adopted in the Report and Order for broadcasters to non-broadcast networks that use ENT and serve less than 50 percent of all MVPD homes, such regulations would impose new compliance obligations that may pose a financial burden on some non-broadcast networks, including smaller entities.

65. If the Commission were to establish maximum intervals for technical equipment checks, or to allow alternatives to such technical equipment checks, such regulations would impose additional compliance obligations on VPDs, including small entities.

66. If the Commission were to adopt the practices proposed by the NCTA for improving the prompt resolution of consumers' captioning concerns, including requiring VPDs to make reasonable efforts to identify consumer complaints received about captioning issues and periodically review those complaints to identify and resolve recurring captioning problems, VPDs, including small entities, would be subject to the recordkeeping requirements associated with the proposal.

67. If the Commission were to adopt rules requiring VPDs experiencing a captioning outage to notify consumers of the outage and file outage reports with the Commission, VPDs, including small entities, would be subject to the reporting and recordkeeping requirements associated with such outage reports.

68. If the Commission were to adopt a rule requiring that all contact information already required

to be submitted by VPDs to the Commission for the VPD registry, see 47 CFR 79.1(i)(3), be submitted using the Commission's web form system, VPDs, including small entities, would not be subject to additional reporting and recordkeeping requirements, because they are already required to submit their contact information to the Commission. However, VPDs, including small entities, may be required to alter their reporting and recordkeeping associated with such submissions in order to comply with the rule.

69. If the Commission were to adopt a rule requiring a VPD, upon receipt of a complaint where the VPD is not the responsible party, to (1) notify the consumer within seven days; (2) offer the consumer a choice of either asking the VPD in writing to forward the complaint to the appropriate party or submitting the complaint directly to the appropriate party on his or her own; and (3) inform the Commission that it has so notified the complainant by providing the Commission with copies of all written or electronic correspondence or a written description of all communications that were not in electronic or written form, VPDs, including small entities, would be subject to the reporting and recordkeeping requirements associated with such complaint forwarding and notifications.

70. If the Commission were to eliminate the four-year exemption contained in § 79.1(d)(9) of its rules pertaining to new networks, 47 CFR 79.1(d)(9), or retain but alter the four-year exemption pertaining to new networks, it would impose new compliance obligations that may pose a financial burden on some smaller entities.

71. If the Commission were to eliminate the exclusion from the definition of video programming for advertisements of five minutes duration or less, 47 CFR 79.1(a)(1), and if the Commission were to eliminate certain self-executing exemptions contained in § 79.1(d) of its rules, including exemptions for late night programming, 47 CFR 79.1(d)(5), locally produced and distributed non-news programming with no repeat value, 47 CFR 79.1(d)(8), interstitials, promotional announcements, and public service announcements that are 10 minutes or less in duration, 47 CFR 79.1(d)(6), and channels producing revenues under \$3 million, 47 CFR 79.1(d)(12), it would impose new compliance obligations that may pose a financial burden on VPDs, including small entities.

72. If the Commission were to take action to ensure the effective implementation of the technical

standards for the display of closed captioning, it may impose additional compliance obligations on television manufacturers and VPDs, including small entities.

73. If the Commission were to adopt rules governing on-screen visual changes or textual depictions that obstruct closed captioning, it may impose additional compliance obligations on VPDs and video programmers, including small entities.

74. If the Commission were to adopt additional rules governing closed captioning of 3D television and Ultra HDTV, it may impose additional compliance obligations on television manufacturers and VPDs, including small entities.

75. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

76. First, the rules already allow small entities to take advantage of various possible exemptions: (1) the exemption for annual revenues under \$3 million, 47 CFR 79.1(d)(12) (However, document FCC 14-12 seeks comment on whether to eliminate this exemption), (2) the exemption limiting the captioning requirement to 2% of annual gross revenues, 47 CFR 79.1(d)(11), and (3) the individual exemption process that allows the Commission to grant exemptions from the captioning rules when the provision of captions would impose an economic burden on a programming entity. 47 CFR 79.1(f).

77. If the Commission were to adopt rules extending responsibilities for compliance with the Commission's closed captioning requirements (including each of the proposals noted above) to video programmers and entities other than VPDs, such regulations would impose new compliance obligations and may impose additional reporting and recordkeeping obligations on video programmers, video programming owners, and other entities, including small entities. However, extending responsibilities for compliance with the Commission's closed captioning requirements to video programmers and other entities may benefit



certain small entities through more efficient regulations that reach those entities with the greatest control over closed captioning quality. In addition, in determining whether to extend responsibility for compliance with the Commission's closed captioning requirements to video programmers or other entities involved in the production and delivery of video programming, the Commission will consider the costs of and benefits of such extension of responsibilities.

78. If the Commission were to adopt rules requiring the use of certain measures to ensure program completeness and synchronicity of closed captions for live and near-live programming and changing the Commission's current definition of near-live programming for purposes of the quality standards adopted in the Order, such regulations would impose additional compliance obligations on VPDs, video programmers, or other entities, including small entities. However, such regulations are less burdensome than the alternative of regulations imposing specific metrics for captioning synchronicity and program completeness. In addition, in determining whether to require certain techniques for improving the quality of real-time captioning of live programming, the Commission will consider the incremental costs and burdens of using any of the proposed techniques compared with the benefits of greater accessibility to television programming.

79. If the Commission were to adopt rules requiring the use of offline captioning or other measures to achieve improved accuracy, synchronicity, placement and program completeness of the captions prior to the re-airing of live and near-live programming first shown after the effective date of any such rule, such regulations would impose additional compliance obligations on VPDs, video programmers, or other entities including small entities. In determining whether to require certain techniques for improving the quality of captioning of live or near-live programming that is later re-aired, the Commission will consider the costs and burdens of using any of the proposed techniques compared with the benefits of greater accessibility to television programming.

80. If the Commission were to apply the ENT requirements adopted in the Order to non-broadcast networks that use ENT and serve less than 50 percent of all MVPD homes to ensure greater accessibility to news programming, such regulations would impose new compliance obligations that may pose a financial burden on some non-broadcast networks, including small entities. However, the Commission's

proposal to apply the ENT requirements to non-broadcast channels serving less than 50 percent of all MVPD homes provides a less burdensome alternative to a phase-out of ENT, which would impose higher burdens and costs on small entities under the current rules. In addition, networks with small budgets would still be able to take advantage of various possible exemptions: (1) the exemption for annual revenues under \$3 million, 47 CFR 79.1(d)(12) (document FCC 14-12 also seeks comment on whether to eliminate the exemption for annual revenues under \$3 million), (2) the exemption limiting the captioning requirement to 2% of annual gross revenues, 47 CFR 79.1(d)(11), and (3) the individual exemption process that allows the Commission to grant exemptions from the captioning rules when the provision of captions would impose an economic burden on a programming entity. 47 CFR 79.1(f).

81. If the Commission were establish maximum intervals for technical equipment checks, or other measures that can be used to ensure that captions are passed on to consumers, such regulations would impose additional compliance obligations on VPDs, including small entities. In determining whether to require intervals for such checks or other measures, the Commission will consider the costs and burdens of these requirements compared with the value of this maintenance to greater accessibility to television programming.

82. If the Commission were to adopt the practices proposed by NCTA for improving the prompt resolution of consumers' captioning concerns, VPDs, including small entities, would be subject to the recordkeeping requirements associated with the proposal. However, the proposal would impose no reporting requirements and does not require specific measures for identifying and reviewing consumer complaints related to closed captioning problems. In addition, such a requirement may benefit small entities because it may reduce consumer complaints regarding captioning, because the VPDs may be addressing problems earlier as a result of these procedures.

83. If the Commission were to adopt rules requiring VPDs experiencing a captioning outage to notify consumers in real time of the outage and file outage reports with the Commission, VPDs, including small entities, would be subject to the reporting and recordkeeping requirements associated with such outage reports. Adopting such a requirement would be in the public interest because it would provide greater

consumer access to information about captioning outages. In addition, such a requirement may benefit small entities because it may reduce consumer complaints regarding captioning outages, because the outage notifications would inform consumers that the VPD is aware of and addressing the problem.

84. If the Commission were to adopt a rule requiring that all contact information already required to be submitted by VPDs to the Commission for the VPD registry, see 47 CFR 79.1(i)(3), be submitted using the Commission's web form system only, VPDs, including small entities, would not be subject to additional reporting and recordkeeping requirements, since they are already required to submit their contact information to the Commission. However, VPDs, including small entities, may be required to alter their reporting and recordkeeping associated with such submissions in order to comply with the rule. In determining whether to require VPDs to submit their contact information via the web form, the Commission will consider the costs of transitioning to a mandatory web form method of filing, compared with the ease and accuracy of filing and the benefits derived from a mandatory system.

85. If the Commission were to adopt a rule requiring a VPD, upon receipt of a complaint where the VPD is not the responsible party, to (1) notify the consumer within seven days; (2) offer the consumer a choice of either asking the VPD in writing to forward the complaint to the appropriate party or submitting the complaint directly to the appropriate party on his or her own; and (3) inform the Commission that it has so notified the complainant by providing the Commission with copies of all written or electronic correspondence or a written description of all communications that were not in electronic or written form, VPDs, including small entities, would be subject to the reporting and recordkeeping requirements associated with such complaint forwarding and notifications. This rule is intended to allow for the forwarding of consumer complaints as required by § 79.1(g)(3) of the Commission's rules without violating the consumer protections contained in sections 631(c)(1) and 338(i)(4) of the Act. Nevertheless, in determining whether to adopt this rule, the Commission will consider the costs of forwarding complaints upon consumer request and notifying the Commission of actions taken compared to the benefits of providing a consumer-friendly way to get the complaints to the correct parties.

86. If the Commission were to eliminate the four-year exemption contained in § 79.1(d)(9) of the

Commission's rules pertaining to new networks, or retain but alter the four-year exemption pertaining to new networks, it would impose new compliance obligations that may pose a financial burden on some small entities. However, under the current rules, networks with small budgets would still be able to take advantage of various possible exemptions: (1) the exemption for annual revenues under \$3 million, 47 CFR 79.1(d)(12) (document FCC 14-12 also seeks comment on whether to eliminate the exemption for annual revenues under \$3 million), (2) the exemption limiting the captioning requirement to 2% of annual gross revenues, 47 CFR 79.1(d)(11), and (3) the individual exemption process that allows the Commission to grant exemptions from the captioning rules when the provision of captions would impose an economic burden on a programming entity. 47 CFR 79.1(f).

87. If the Commission were to eliminate the exclusion from the definition of video programming for advertisements of five minutes duration or less, 47 CFR 79.1(a)(1), and if the Commission were to eliminate certain self-executing exemptions contained in § 79.1(d) of its rules, including exemptions for late night programming, 47 CFR 79.1(d)(5), locally produced and distributed non-news programming with no repeat value, 47 CFR 79.1(d)(8), interstitials, promotional announcements, and public service announcements that are 10 minutes or less in duration, 47 CFR 79.1(d)(6), and channels producing revenues under \$3 million, 47 CFR 79.1(d)(12), it would impose new compliance obligations that may pose a financial burden on VPDs, including small entities. However, under the current rules, entities with small budgets would still be able to take advantage of other possible exemptions: (1) the exemption limiting the captioning requirement to 2% of annual gross revenues, 47 CFR 79.1(d)(11), and (2) the individual exemption process that allows the Commission to grant exemptions from the captioning rules when the provision of captions would impose an economic burden on a programming entity. 47 CFR 79.1(f).

88. If the Commission were to take action to ensure the effective implementation of the technical standards for the display of closed captioning, it may impose additional compliance obligations on television manufacturers and VPDs, including small entities. In determining whether to require any other practices governing technical standards for the display of closed captioning, the Commission will consider the costs and burdens of such practices compared with the benefits of greater accessibility to television programming.

89. If the Commission were to adopt rules governing on-screen visual changes or textual depictions that obstruct closed captioning, it may impose additional compliance obligations on VPDs and video programmers, including small entities. In determining whether to require any other practices governing on-screen visual changes or textual depictions that obstruct closed captioning, the Commission will consider the costs and burdens of such practices compared with the benefits of greater accessibility to television programming.

90. If the Commission were to adopt rules governing display of closed captioning, closed captioning of 3D television or Ultra HDTV programming, it may impose additional compliance obligations on television manufacturers and VPDs, including small entities. However, VPDs are already subject to rules governing the display of closed captioning and are required to reliably encode, transport, and render closed captions on 3D and Ultra HDTV video programming in accordance with Commission rules. Also, in accordance with the Commission's captioning rules, such VPDs and providers must permit the pass through or rendering of closed captions in a manner that will allow viewers to exercise control over various display features and to activate and deactivate captions when video programming is played back on television receivers with 3D or Ultra HDTV capability. Finally, interconnection mechanisms and standards for 3D and Ultra HDTV video source devices must be capable of conveying from the source device to the consumer equipment the information necessary to permit or render the display of closed captions. In determining whether to require any other practices for the display of closed captioning or captioning 3D television or Ultra HDTV, the Commission will consider the costs and burdens of such practices compared with the benefits of greater accessibility to television programming.

91. Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals.

None.

#### **ORDERING CLAUSES**

Pursuant to sections 4(i), 303(r) and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 613, document FCC 14-12 IS ADOPTED.

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL

SEND a copy of document FCC 14-12 including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch,  
Secretary.

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